



July 16, 2008

Thomasenia Duncan, Esq. General Counsel Federal Election Commission 999 E Street, N.W. Washington, D.C. 20463

MUR # 6037

Re: Supplement to Complaint against Jeff Merkley, Jeff Merkley for Oregon and the Democratic Party of Oregon

Dear Ms. Duncan:

This is a supplement to the Complaint filed with the Federal Election Commission ("FEC" or "Commission") on July 10, 2008 pursuant to 2 U.S.C. §437g(a)(1) and 11 C.F.R. §111.4 against Jeff Merkley, Democratic nominee for the United States Senate from Oregon, ("Merkley"), Jeff Merkley for Oregon, Merkley's principal campaign committee ("Merkley Campaign") and the Democratic Party of Oregon ("Democratic Party") (collectively hereafter, "Respondents") ("Supplement"). The Supplement is filed by the Friends of Gordon Smith Committee, located in Lake Oswego, Oregon, by and through its Campaign Manager, Brooks Kochvar ("Complainant"), a resident of Clackamas County. Complainant hereby adds the Democratic Senatorial Campaign Committee ("DSCC") as an additional Respondent for the reasons stated below.

Respondents, all of them, have committed further violation(s) of the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"), as demonstrated by the additional information included in this Supplement. Respondents continue to evidence a willful and continuing disregard of federal campaign finance rules and regulations governing soft money and coordinated expenditure limits by political parties on behalf of their nominees, with a specific intent to circumvent the provisions of McCain-Feingold.

#### SUMMARY OF INITIAL COMPLAINT AND SUPPLEMENTAL YIOLATIONS OF LAW

The original complaint is based on the Respondents' intentional violation of FECA by their production and airing of an advertisement on veterans benefits in which Merkley appeared and read a script based almost wholly on statements contained on the

Merkley Campaign website ("Ad #1"). The disclaimer for the advertisement stated that it was paid for by the Oregon Democratic Party but not authorized by any candidate or candidate's committee. The Complaint demonstrated that Ad #1 was a coordinated public communication between and among Respondents, which constituted an illegal and excessive contribution from the Democratic Party to Merkley and the Merkley Campaign.

Complainant hereby submits additional public statements and documents regarding Ad #1, further demonstrating the coordinated and illegal purpose of the expenditure. Ad #1 was apparently paid for by the DSCC which transferred funds to the Oregon Democratic Party to pay for Ad #1. The 'defense' offered by Respondents to the Complaint and the evidence of the illegal expenditure is that Ad #1 was not intended as a campaign-related ad, but was, instead, an 'issue ad' with no 'electoral' purpose. The fact that Ad #1 was actually paid for by the DSCC underscores that the *only* purpose of the Ad was to further the Merkley candidacy and to promote the Merkley Campaign, utilizing funds in excess of the statutory limits to do so.

Since the only purpose of the DSCC is to elect Democrats to the United States Senate, as evidenced by the public statement of purpose of the DSCC in its charter and reflected on its website, the only reason for the DSCC to send the money to the Oregon Democratic Party to pay for Ad #1 was and is to try to help elect Merkley to the United States Senate. The DSCC is complicit in the illegal conduct complained of in the Complaint and this Supplement.

As evidence of the blatant and continuing violation of federal law by Respondents, they have now started airing a second advertisement on the subject of 'crime' ("Ad #2"). Again, Merkely appears in Ad #2, the script mirrors language found on the Merkley campaign website, and the disclaimer again claims that the ad is paid for by the Oregon Democratic Party<sup>1</sup>, but 'not authorized by any candidate or candidate's committee'.

It is clear that Respondents have conspired to engage in violations of FECA. An analysis of the facts demonstrates a purposeful and deliberate effort by Respondents to circumvent both the federal contribution limits and coordinated spending limits, resulting in illegal in-kind, excessive and potentially prohibited contributions from the Democratic Party and the DSCC to Merkley and the Merkley Campaign.

Specifically, Merkley and the Merkley Campaign have worked in coordination with the DSCC and the Democratic Party to create and disseminate an ongoing television advertising campaign, the cost of which exceeds both the DSCC's and the Democratic Party's legal contribution limits to the Merkley Campaign and the statutory limit on the Democratic Party and DSCC's combined allowable expenditures that may legally be coordinated with the Democratic nominee for the United States Senate from Oregon.

<sup>1</sup> It is likely that Ad #2, like Ad #1, was not paid for by the Oregon Democratic Party but was paid for by the DSCC.

Respondents' actions are a calculated effort to evade the prohibitions and limitations of federal law and constitute illegal coordinated communications that exceed the legal limits. Further, Ad #2 contains a false disclaimer that is not in compliance with federal regulations.<sup>2</sup>

#### Specific Facts of the Supplement to the Complaint

- 1. The Factual Background included in the Complaint is restated and incorporated into the Supplement by reference.
- Upon release of the Complaint to the media, statements were given by the Democratic Party, Merkley, the Merkely Campaign and the DSCC regarding Ad #1 and the complaint of Respondents' illegal activity. See Complaint Supplement Attachment D
- 3. Merkley Campaign spokesman stated that the DSCC paid for Ad #1. See Complaint Supplement Attachment D.
- 4. The sole purpose of the DSCC is to elect Democrats to the United States Senate. See Complaint Supplement Attachment E.
- 5. On July 2, 2008, Jeff Merkley for Oregon issued a press release entitled "Merkley Unveils Plan to Protect Children and Families from Violent Crime." In the release, Merkley claimed that he "helped pass 'the nation's strictest antimethamphetamine measure," "fought to keep sex offenders away from our kids," and "will champion tough new legislation to crack down on internet predators that threaten our kids." The text of the posting is attached hereto as Complaint Supplement Attachment F.
- 6. On or about July 8, 2008, a 30-second television advertisement featuring Merkley aired in the largest media markets in Oregon. The text of the advertisement and a CD-ROM containing the video are attached hereto as Complaint Supplement Attachment G.
- 7. Jeff Merkley identifies himself, speaks to the camera, and his voice is heard throughout the communication.
- 8. In the communication, Merkley claims that he "passed our nationally recognized law to battle the meth epidemic," "passed one of the toughest internet predator

Any campaign communication authorized by a candidate or candidates committee must comply with the "general content requirements" of 11 CFR 110.11(b)(2), the "specifications for all disclaimers" in 11 CFR 110.11(c)(1), and the "specific requirements for television communications authorized by a candidate" in 11 CFR 110.11(c)(3). AO 2004-1. In addition, television advertisements authorized by a candidate are required to include a candidate appearing in an unobscured, full screen view making a statement that identifies the candidate and states his or her approval of the communication or a voice-over of a photograph of the candidate to a similar effect. 11 CFR § 110.11(c)(3)(ii).

laws in the country and supported new laws to keep track of sex offenders." He ends by saying that "we need to do a better job of protecting our children."

- 9. Jeff Merkley identifies himself and his voice is heard throughout the communication. Merkley speaks directly to the camera discussing legislation he 'passed' during his tenure in the Oregon legislature. The 'action line' of the script urges viewers to 'Call Congress', but Ad #2 does not reference or discuss any federal legislation or proposal before the Congress.
- 10. Despite Merkley's prominent appearance in Ad #2, the spoken disclaimer states that "the Democratic Party of Oregon is responsible for the content of this advertising." The written disclaimer states "Paid for by the Democratic Party of Oregon. www.dpo.org. Not authorized by any candidate or candidate's committee. The Democratic Party of Oregon is responsible for the content of this advertisement."
- 11. For the 2007-08 election cycle, the total amount allowable under federal law for combined state and national party committee expenditures by political parties for and coordinated with their nominees for the U.S. Senate race in Oregon is \$485,200. As of May 31, 2008, the DSCC reported having spent \$386,088.63. The initial buy for Ad #1 was approximately \$220,000 based on information obtained from public sources. The initial buy for Ad #2 was approximately \$220,00. See Complaint Supplement Attachment H.
- 12. A spokesman for the Democratic Party and/or the DSCC has said the purpose of both ads is "party building". See Complaint Supplement Attachment D.

#### **Count VI**

Respondents' Advertising Campaign Is the Functional Equivalent of Express Advocacy and Illegally Promotes Merkley's Candidacy for Federal Office

A. The Supreme Court's rationale for a communication whose "only reasonable interpretation" is express advocacy applies to Respondents' advertisements.

In Wisconsin Right to Life v. FEC, 551 U.S. \_\_\_ (2007) ("WRTL"), the United States Supreme Court held that a communication is the "functional equivalent of express advocacy" only if it "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The Court articulated this test in response to a challenge brought by a non-profit corporation seeking to use its own general treasury funds to run issue ads related to a legitimate legislative issue pending before Congress. Respondents' attempts to bring their advertisements within the Court's decision governing legitimate issue ads requires the application of the Court's entire analysis to communications seeking exemptions under the cloak of an "issue ad."

The Democratic Party and DSCC ads featuring Merkley touting his own record of accomplishment on various legislative acts have no tenable purpose or reasonable interpretation other than to encourage voters to elect Merkley, and are simply unprecedented attempts to circumvent the legal contribution limits to and coordinated party expenditures for Merkley and the Merkley Campaign. Ad #1 and Ad #2 are both the functional equivalent of express advocacy according to the Supreme Court's analysis in WRTL.

## B. Respondents' Ads meet the Supreme Court's "only reasonable interpretation" test of express advocacy, and are not "issue ads".

The Supreme Court described a true issue ad as one that "conveys information and educates" and one where "voters hear the information and choose—uninvited by the ad—to factor it into their voting decisions." Unlike WRTL, however, Ad #1 and Ad #2 primarily convey information and educates voter about Merkley—not any legitimate legislative congressional issue. The information conveyed is a direct invitation to learn about and eventually vote for Merkley, despite the lack of "magic words" urging voters to elect or support Merkley.

Furthermore, the Supreme Court's test focuses "on the substance of the communication rather than amorphous considerations of intent and effect" in an effort to determine whether ads are the "equivalent to contributions." The substance of both ads is the appearance in each by Senate candidate Merkely and the highlights of his legislative record. A random and utterly disconnected "call to Congress" about state legislative issues only underscores the deliberate attempts by Respondents to falsely claim that Ad #2 is anything other than a pro-Merkley communication. In fact, Ad #2 cannot be interpreted reasonably as anything other than what it is: a direct contribution by the Democratic Party and the DSCC to Merkley and the Merkley Campaign.

#### C. The Ads by the Democratic Party and the DSCC violate the FEC's twoprong test to determine when a communication has the "indicia of express advocacy."

In the FEC's Final Rule for implementing the Supreme Court's decision in WRTL, the Commission promulgated a two-prong test to determine when a communication includes "indicia of express advocacy." First, the communication may not mention "any election, candidacy, political party, opposing candidate, or voting by the general public." Second, it may not take a position on the candidate's "character, qualifications, or fitness for office." See 11 C.F.R. § 114.15(c)(1)(i)-(ii).

As noted in the Factual Background, a Democrat official claimed the Democratic Party of Oregon's ad featuring Jeff Merkley was part of "a variety of party-building activities." A party building communication by its very definition violates the first prong of the FEC's test. The Democrat official effectively admitted that the Democratic Party of Oregon's ad was not an issue ad, but an attempt to advocate on behalf of the party.

A communication that features the candidate touting his own record violates the second prong of the FEC's test. The Commission has said that "a reference to the past voting record of the officeholder or candidate on a particular issue does not by itself" violate the second prong, but that "the Commission will examine the entirety of the content" of the communication. This ad, however, does not simply reference Merkley's past voting record—it touts it. And if a voter is curious after watching Merkley discuss his record, that voter can type "Jeff Merkley" into Google and the first hit will be his campaign website.

Failure to meet any given prong of this test does not automatically disqualify it from exemption under 11 C.F.R. § 114.15(c); the Court stated that "[w]here the First Amendment is implicated, the tie goes to the speaker." But there is no tie here. The Democratic Party and DSCC, together with Merkley and the Merkley Campaign are playing with a corked bat. And unlike Wisconsin Right to Life, which sought relief from the Supreme Court because it was subject to a total ban on making expenditures for legitimate issue advertisements, neither the Democratic Party nor the DSCC is subject to such prohibitions. Either can make independent expenditures, subject to the statutory standards for independence from the candidate and campaign. coordinated expenditures for such communications, subject to the statutory spending limits. Indeed, both the DSCC and the Democratic Party have taken advantage of their statutory coordinated spending authority and, having now exhausted that authority, seek to make additional coordinated expenditures over and above the legal limits. But rather than making such expenditures independent of the candidate and his campaign, they have coordinated their efforts and ask the public to believe that these ads have nothing to do with the Merkley campaign and Merkley's candidacy for the Senate.

Applying the Supreme Court's plain language, when taken as a whole, there is no other reasonable interpretation of Respondents' advertisements than as appeals to support, promote and vote for Merkley.

## D. The content of Respondents' Ad #2 does not focus on an issue of public policy as articulated by either the Supreme Court or the FEC.

The FEC has determined that a communication's content would support its identity as a genuine issue ad if it "focuses on a public policy issue and either urges a candidate to take a position on the issue or urges the public to contact the candidate about the issue" or if it "includes a call to action or other appeal that is interpreted in conjunction with the rest of the communication as urging action other than voting for or against or contributing to a clearly identified Federal candidate or political party." See 11 C.F.R. § 114.15(c)(2)(i), (iii).

Ad #2 does not focus on an issue of public policy as articulated by either the Supreme Court or this Commission. The only issue in this ad is Merkley and his candidacy for the Senate. Rather than "a call to action" on the issue, Ad #2 educates voters about Merkley's state legislative record. The so-called "call to action" at the end

of Ad #2 is a thinly veiled disguise to circumvent the law and is merely an effort to increase Merkley's name identification and profile across the state of Oregon with illegal expenditures by the Democratic Party and the DSCC, which are nothing more or less than illegal contributions to the Merekley campaign.

#### Count VII

Respondents Merkley, Merkely Campaign, the Democratic Party and the DSCC Have Violated Federal Law by Coordinating Public Communications in Excess of Federal Contribution Limits

The DSCC / Democratic Party Ad #2 featuring Merkley is a coordinated public communication as defined in federal law for the exact same reasons set forth in the Complaint regarding Ad #1.

As a result of the coordination by and among the Respondents, the costs of the production and dissemination of the advertisement by the Democratic Party and the DSCC constitute an in-kind contribution from the Democratic Party and the DSCC to Merkley and the Merkley Campaign, which amounts exceed the legal limits for direct contributions and /or coordinated party expenditures. Such contributions are, therefore, excessive and illegal contributions to Jeff Merkley and the Merkley Campaign.

#### **Count VIII**

Respondents Merkley, the Merkley Campaign, the Democratic Party and the DSCC Knowingly and Willfully Conspired to Violate Federal Law by Coordinating Illegal Expenditures

Ad #2 also runs afoul of the plain terms of 2 U.S.C. § 441a(a)(7)(B)(i) ("expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate") and 11 C.F.R. § 109.20.

11 C.F.R. § 109.20(a)states: "Coordinated means made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee." Under 11 C.F.R. § 109.20(b), "[a]ny expenditure that is coordinated within the meaning of paragraph (a) of this section, but that is not made for a coordinated communication under 11 C.F.R. § 109.21 or a party coordinated communication under 11 C.F.R. 100.37, is either an in-kind contribution to, or a coordinated party expenditure with respect to, the candidate or political party committee with whom or with which it was coordinated and must be reported as an expenditure made by that candidate or political party committee."

Thus, if Ad #2 is found to be made with "cooperation, consultation or concert," but not to satisfy the requirements of 11 C.F.R. § 109.21 or 11 C.F.R. § 109.37, it is still a coordinated communication.

Clearly, Ad #2 was made in "cooperation, consultation or concert" with Merkley. Merkley appeared in the advertisement and, therefore, the advertisement was obviously made with his cooperation and in concert with him. Respondents here could not have acted independently to produce the television advertisement in question and obviously did NOT act independently in developing, disseminating and paying for the advertisement.

Because the communication was coordinated between Merkley, the Merkley Campaign, the DSCC and the Democratic Party, it is an "in-kind contribution to, or a coordinated party expenditure with respect to, the candidate or political party committee with whom or with which it was coordinated and must be reported as an expenditure made by that candidate or political party committee." 11 C.F.R. § 109.20. Under 2 U.S.C. § 441a(a)(7)(B)(i) and 11 C.F.R. § 109.20, Ad #2 is clearly coordinated between Merkley and the Democratic Party and the DSCC.

Respondents are apparently relying on 11 C.F.R. §109.21(c) to defend their willful violation of the Act. However, 11 C.F.R §109.21(c) was invalidated by the U.S. Court of Appeals for the District of Columbia on June 13, 2008 in Shays v. Federal Election Commission, No. 07-5360 (D.C. Cir. 2008). The court did not stay its decision, such that the regulation is not in force and effect at the present time, a fact that the Respondents are well aware of.

The court struck down the regulation for the very reason that Respondents' conduct demonstrates: "Outside the 90/120-day windows, the regulation allows candidates to evade—almost completely—BCRA's restrictions on the use of soft money." The court further stated: "In sum, the record demonstrates several key points: (1) the vast majority of advertising by candidates occurs in the 90/120-day windows the FEC regulates more strictly; (2) candidates and outside groups nonetheless run a significant number of ads before the 90/120-day windows; and (3) very few ads contain magic words." The court concluded by stating that while the FEC's decision to regulate ads more strictly within the 90/120-day windows may have been "reasonable", the "functionally meaningless" standard applied outside those windows was not reasonable, and is invalid. Respondents may not defend an excessive coordinated communication by relying on a regulation that the court has found to be "functionally meaningless" and invalid.

Ad #2 violates the federal contribution limits and is an illegal contribution from the Democratic Party and the DSCC to Merkley and the Merkely Campaign. Merkley and the Merkley Campaign have knowingly and willfully separately violated the law by accepting the excessive contributions from the DSCC and the Democratic Party.

#### **Count IX**

## Merkley and the Merkley Campaign Violated the "Stand By Your Ad" Requirements of BCRA

A communication that is a party coordinated communication authorized by the candidate or candidate's committee within the limits of 2 USC 441d(a) must contain the required disclaimers under federal law. 11 C.F.R. § 110.11 sets forth the language that must be contained in disclaimers for a television advertisement coordinated with and authorized by a federal candidate. See 11 C.F.R. § 110.11.

It is simply impossible to assert, as the advertisement's disclaimer does, that this communication was not authorized by a candidate. Merkley appears in Ad #2 and reads the script to the camera, thus authorizing the advertisement in which he appears. Accordingly, the disclaimer required by federal law for candidates must include the "Stand By Your Ad" language. See 11 CFR § 110.11.

#### **COUNT X**

The Facts Giving Rise to this Complaint Constitute a Knowing and Wiliful Violation of Federal Law in an Approximate Amount of \$220,000 and Should be Reviewed for Potential Referral to the United States Department of Justice

The amount at issue regarding Ad #2 is approximately \$220,000 with unknown production costs. Ad #1 involved approximately \$220,000 of broadcast time purchase with unknown production costs.

Clearly, the Respondents in this project have conspired actively to circumvent the coordinated party expenditure limits of federal law governing federal campaigns, candidates and political parties as set forth in BCRA and FECA.

When Congress enacted BCRA in 2002, it included a provision designed to strengthen the enforcement of and penalties for deliberate violations of the law. 2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt. As the Federal Election Commission stated in promulgating the BCRA regulations related to the new civil penalties, "The Act imposes civil penalties on anyone violating any portion of FECA... The Act's civil penalties, found at 2 U.S.C. 437g(a)(5), (6), and (12), are organized into two tiers of monetary penalties; one tier of penalties for violations of the Act, and a second tier of penalties for "knowing and willful" violations of the Act." Explanation and Justification of Rules and Regulations of the Federal Election Commission, Vol. 67 Federal Register, No. 240, 76962 @ 76969 (Friday, December 13, 2002).

Further, FECA (2 U.S.C. 437g(d)(1)(A)) was amended by BCRA to include not only increased civil penalties but also criminal penalties for knowing and willful violations of law: "(A) Any person who knowingly and willfully commits a violation of

any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure— ``(i) aggregating \$25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years."

Respondents here have spent nearly twenty times the \$25,000 threshold for potential criminal referral and these Respondents should be held to the very highest standard of responsibility for noncompliance with federal law. Their willful and flagrant violation of the law must be punished accordingly.

#### Conclusion

As a result of the above information, the undersigned hereby demands that the Federal Election Commission conduct an investigation into the facts and circumstances set forth in this Supplement to its Complaint and that the individuals and organizations involved in this matter be ordered to comply with provisions of federal law, and that other appropriate action to remedy these violations be ordered.

Respectfully Submitted,

Brooks T. Kochvar Campaign Manager Friends of Gordon Smith

#### **ATTESTED AND SWORN**

County of Clackamas State of Oregon

Brooks T. Kochvar hereby verifies under penalty of perjury that the above statements are true and correct to the best of my information and belief and based upon the publicly available information provided to the Commission and attached to this Complaint. Sworn to pursuant to 18 U.S.C. § 1001.

Brooks T. Kochvar

Before me appeared this \6 day of July, 2008, Mr. Brooks Kochvar. The foregoing instrument was subscribed and sworn before me this day as true and correct.

NOTARY PUBLIC

SEAL

My commission expires Oct. 19, 2010



# Attachment D



## The Oregonian

### Smith campaign says rival's TV ads skirt finance laws Democrate says the spots, featuring Jeff Merkley, deal with issues and don't promote the candidate

Wednesday, July 09, 2008 JEFF MAPES The Oregonian Staff

Two new television commercials feature Democratic U.S. Senate candidate Jeff Merkley talking about how he's worked to help veterans and fight crime, but his own campaign says the ads aren't designed to promote his candidacy.

That may sound odd — who ever heard of a politician appearing in ads that aren't supposed to help him get elected? — but his campaign and the Democratic Party of Oregon insist that is exactly what they're doing.

"The purpose of this ad is not to advocate for Jeff Merkley's election," said Merkley spokesman Matt Canter. "It's to advocate for our veterans" and for fighting crime.

While the Democrats see it that way, the campaign of Merkley's rival, Sen. Gordon Smith, R-Ore., wants the ads off the air.

Smith's campaign filed a complaint Tuesday with the Federal Election Commission charging that Merkley and the party are trying to circumvent federal law to give Merkley more money for advertising.

"The goal is to obfuscate and evade campaign finance laws," said Brooks Kochvar, Smith's campaign manager. "Jeff Meridey has not had the resources to run campaign ade of his own. He is finding a way to violate federal election law so that he can get television advertising on as we go through the summer months."

Marc Siegel, a spokeeman for the Democratic Perty of Oregon, which paid for the ads with the help of the Democratic Senatorial Campaign Committee, responded that the Smith complaint has "zero legal merk" and shows that the Republican senator is desperate to stop Democrate from talking about the lesses.

The details of federal election law — and of just how the ad was put together — are complex. But the two ads featuring Meridey test the limits of the laws governing campaign finance.

They could also be crucial in the Smith-Merkley race. Smith had nearly \$4.9 million in the bank as of April 30 and is saturating the sirwaves this summer. Merkley is rebuilding his campaign fund after a hard-fought primary with Steve Novick and can't match Smith on TV. But the Democratic Senatorial Campaign Committee has plenty of money in the bank — \$37.5 million as of May 31 — and a strong desire to see Merkley topple Smith.

Matthew Miller of the campaign committee said his group helped pay for the ads to help the Democratic Party of Oregon with "a variety of party-building activities." Neither Miller nor Slegel would say how much the committee gave the party for the ads.

The Smith campaign says the Democrats spent some \$440,000 on airlime for the commercials.

Before the McCain-Feingold campaign finance limits were passed in 2002, the political parties had fewer restrictions on their ability to run independent ada promoting candidates. The parties continue to run independent ada, but they face tighter rules and limits on donations.

The independent ad with Merkley is unusual because he does the voice-over for each ad and is featured talking into the camera.

The Democratic Party says it doesn't have to count the money spent on the ads as a contribution to the Merkley campaign.

That's because the ads are technically only about issues, they say. Merkley never mentions he is a candidate for the Senate, he never asks arryone to vote for him, and he never mentions Smith.

"This ad is designed to talk about the issues that are important to Democrats," said Siegel, adding that Merkley is featured in the ads because he helped lead the party on crime and veterans issues as speaker of the Oregon House.

Kochvar called that "laughable on its face. . . . They put Jeff Merkley in the ads for a reason. They put him in the ads to promote his candidacy."

Cleta Mitchell, an election law attorney advising the Smith campaign, said it looks as if the Democratic Senatorial Campaign Committee is trying to find a new way to furnel money to one of its candidates.

"I haven't seen anybody even try this one," she said.

Mitchell argued that the ads should have been counted as an expenditure made with the knowledge and approval of the candidate. She said the Democrats couldn't do that, however, because they've already spent \$386,000 of the \$485,000 that the party committees are allowed to spend on behalf of the Merkley campaign.

However, Nell Reiff, an attorney retained by the Democratic Party of Oregon, said the party is allowed to run this type of advartisement more than 90 days before the November election.

Paul Ryan, a lawyer for the nonpartisan Campaign Legal Center, has been fighting with the Federal Election Commission to put tighter restrictions on the kind of political advertising allowed outside the 90-day window.

Ryan said the legality of the Merkley ads could hinge in part on whether they republished material from the Merkley campaign. The Smith compleint alleges that the veterans ad takes material from the Merkley Web site. Relif, however, said the ad merely "echoed themes" used by the Merkley campaign.

Jeff Mapes: 503-221-8209; jeffmapes@news.oregonian.com

**G2005** Oregonian

# Attachment E

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Our mission is to elect Democrats to the United States Senate. We are the largest organization solely dedicated to electing a Democratic Senate in the country. From grass-roots organizing to candidate recruitment to providing campaign funds for tight races, the DSCC is working hard all year, every year to increase the number of Democratic Senators.

We are gearing up for the 2008 elections. With George W. Bush in the White House and his continuing hard right agenda, it is essential that we gain even more seats if we are to promote fundamental Democratic ideals of fairness, equality, and freedom.

Your support helps fund efforts to mobilize voters and ensure that the playing field is level between our candidates and well-funded Republican candidates. As the races begin to heat up, you will be supporting polling, media stratagy, and the formation of campaign staff. And as the races reach Election Day in November of 2008, you will help provide campaign funds to overcome the onslaught of negative Republican campaign ads that have become all too common in the last few elections.

The 2006 Senate elections were Immensely important, putting Democrats in the majority by one seat. If you agree that it is crucial that Democrats gain more seats to sustain the majority, generously supporting the DSCC is the best way to do it.



# Attachment F

#### Merkley Unveils Plan to Protect Children and Families from Violent Crime

John Krager, Law Enforcement Leaders Endorse New Plan

During his 100 Towns for Change Tour, House Speaker Jeff Merkley, candidate for U.S. Senate is announcing a new plan to protect children and families from violent crime. Merkley's plan will crack down on sex offenders and meth producers, protect victims of violent crimes, and add 50.000 more police on the street.

Merkley's plan to keep families safe is endorsed by law enforcement officials across the state, including candidate for Attorney General John Kroger, Attorney General Hardy Meyers, Josh Marquia, District Attorney for Clatsop County, Michael Dugan, District Attorney for Deschutes County, and Ed Caleb, District Attorney for Klamath Falls.

"Gordon Smith is all talk and no action when it comes to keeping our families safe," said House Speaker Jeff Merkley. "As a father of two I believe that keeping our children and our communities safe is our top priority and a never-ending job. For more than a decade I've worked with law enforcement to clean up our neighborhoods and keep Oregon families safe. In the U.S. Senate I will not rest until our law enforcement have the resources they need to protect us and our kids."

#### Markley's Record

- \* Jeff Merkley helped pass "the nation's strictest anti-methamphetamine measure." [Governing Magazine, 10/05]
- As Speaker, Merkley fought to keep sex offenders away from our kids, making it illegal to lure children over the internet.
- Merkley led the charge to add 139 state troopers to Oregon highways to help law enforcement patrol roads and highways 24 hours a day, seven days a week.
- Merkley led the fight for funding to expand the state DNA crime lab to help erose the backlog and ensure that justice is served.

#### Smith's Record

While Mericley has delivered for law enforcement and public safety, Gordon Smith has voted with George Bush to cut critical funding for Oregon law enforcement.

- Smith opposed over \$30 billion for law enforcement and other first responders. [Vote 73, 3/21/03; Vote 88, 3/25/03; Vote 123, 4/3/03;
   Vote 291, 7/22/03; Vote 293, 7/23/03; Vote 299, 7/24/03; Vote 50, 3/15/05; Vote 6, 1/17/03; Vote 92, 3/25/03]
- \* At least five times Gordon Smith tried to cut or eliminate funding for the Community Oriented Police program (COPS), which puts more police on the street to combat crime in our neighborhoods. [Vote 109, 5/12/99; Vote 139, 5/20/99; Vote 78, 3/21/03; Vote 70, 3/17/05; Vote 226, 9/13/05;)
- Smith opposed funding for Byrne Grants, which help local communities combat drug and gang activity. [Vote 109, 5/12/99; Vote 6, 1/17/03; Vote 78, 3/21/03; Vote 92, 3/25/03]
- Smith voted to kill a program to assist and protect children who were witnesses to domestic violence. [Vote 125, 5/18/99]

- Smith opposed increased funding for the National Center for Missing and Exploited Children by \$10 million and the Office of Violence Against
   Women by \$9 million. [Vote 226, 9/13/05]
- Smith failed to join Senator Wyden to protest Bush Administration cuts to the Victims of Crime Act, which provides critical services to crime victims and their families. [National Center for Victims of Crime, 4/4/08]

#### The Jeff Heriday Plan to Protect Children and Families from Violent Crims

#### **Markley Will Fight Meth**

Jeff Merkley understands that the meth epidemic has ravaged our communities causing increases in child abuse, property crime and identify their. Recognizing this serious problem, Merkley created stiffer penalties for meth producers and restricted the availability of key meth ingredients by making certain cold medicines available only with a prescription.

\* Increase federal resources to prosecute meth producers

In the U.S. Senate, Meridey will work to launch a national crackdown on meth use by adding more federal prosecutors in Oragon and agents from the Drug Enforcement, to ensure that Oragon and other states in the region get their fair share of federal anti-drug funding.

Overhaul drug treatment programs

The nation's drug treatment system is failing to deal with meth, fueling property crime, identity theft, and violent crime. As a Senator,

Meridey will help lead a major overhaul of how drug treatment programs are conducted - investing in proven, successful meth programs at
the local, state and federal levels.

\* Strengthen sentences for property crime and identity theft

To stop meth addicts who commit crimes to fund their drug use, Meriday will support tough, mandatory sentances for persons who violate federal drug trafficking laws.

#### **Merkley Will Crack Down on Sex Offenders**

In the U.S. Senate, Meriday will continue his work to protect our idds from sex offenders on the streets and online. Merklay will:

Increase supervision of registered sex offenders

Meriday will push the federal government to help local law enforcement protect our kids from registered sex offenders. Many communities in Oregon and across the country lack the funding needed to supervise some of the most dangerous sex predators. Meriday will fight for more federal funds for states to help local law enforcement protect children from sex offenders.

\* Strengthen child pornography laws

Currently federal law only bans child pornography that is shipped across state or international borders. Merkley will work to expand the definition of "child sexual exploitation" and "child pornography" to include criminal activities that "affect" interstate or foreign commerce. He will introduce the Effective Child Pornography Prosecution Act in the Senate which passed the House last year.

· Require sex offenders to register their online identifiers

As more of our children access the internet, sex offenders are going online and threatening their safety. Merkley will champion tough new legislation to crack down on internet predators that threaten our kids.

Merkley will work to expand the National Sex Offender Registry to include email addresses, websites, social networking site usernames, and other online identifiers. Registered sex offenders will be required to provide this information just like they provide their current address.

\* Ben online impersonation of children

Another growing threat online are adults soliciting and harassing children by portraying themselves as other children. As Speaker, Merkley made R a crime for an adult to solicit a child online. In the U.S. Senate, Merkley will work to make R a federal crime for an adult to solicit or

Merkley Will Add 50,000 Mere Police on the Street

Merkley will reverse the cuts Smith has made and fight to add 50,000 more police officers on America's streets. With more police on the streets, our communities will be able to stem the tide of violent crime in America's cities. In the 1990's the Clinton Administration added 100,000 police officers to America's streets through the COPS program, reducing crime rates to historic lows.

Gordon Smith, the Bush Administration and others have sizehed this funding decimating many of Oragon's police departments.

\* Fortland's Police Bureau is understaffed by at least 40 positions;

Gresham faces the potential of being short 70 officers in the next few years;

\* Forest Grove is understaffed;

\* TriMet is understaffed by about 150 officers;

\* Lane County is understaffed, which has led to a rise in crime there.

[The Oregonian, 6/12/06; The Oregonian, 3/6/08; The Oregonian, 1/24/08; University Wire, 1/10/05]

Merkley will restore the damage that has been done, adding police officers Oregon needs to keep communities safe.

#### **Protect Victims of Violent Crime**

As Oregon's Senator, Jeff Merkley will work to ensure that crime victims get the support they need. By fully funding Victims of Crime Act (VOCA), Merkley will ensure that state and local authorities have the resources to provide counseling, health care, outreach, emergency travel, and other support for crime victims and their families, particularly in rural areas, where victims are most isolated.

VOCA is not taxpayer funded. It is supported by fines and penalties paid by federal criminals. Yet Gordon Smith and the Bush Administration have failed to fully fund the program, diverting revenue to pay for other budget items.

#### Increase DNA Technology

Meridey created 15 new forensic lab positions to eliminate the backlog of DNA samples that must be analyzed for the state criminal forensics database. States all across the country are facing similar backlogs. DNA evidence in these states could help convict criminals that may now be located in Oregon. Meridey will champion efforts at the federal level to help state and local law enforcement address DNA backlogs across the country.

Posted July 2, 2008 - Press Release - http://www.jeffmerkley.com/2006/07/merkley\_unvalls.php

# Attachment G

#### Script of Ad #2

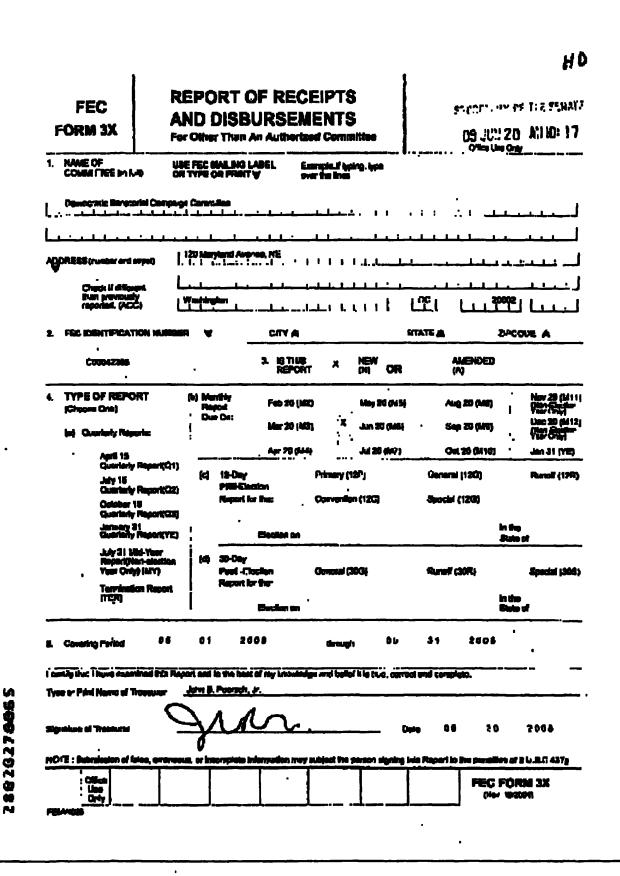
#### Jeff Merkley:

Instant messaging, chat rooms, social networking sites. We never really know who our children are talking to. I'm Jeff Merkley, and that's why I passed one of the toughest internet predator laws in the country, and supported new laws to keep track of sex offenders. And it's why we passed our nationally-recognized law to battle the meth epidemic. We need to do a better job of protecting our children.

#### Announcer:

The Democratic Party of Oregon is responsible for the content of this advertising.

# Attachment H



Page 2

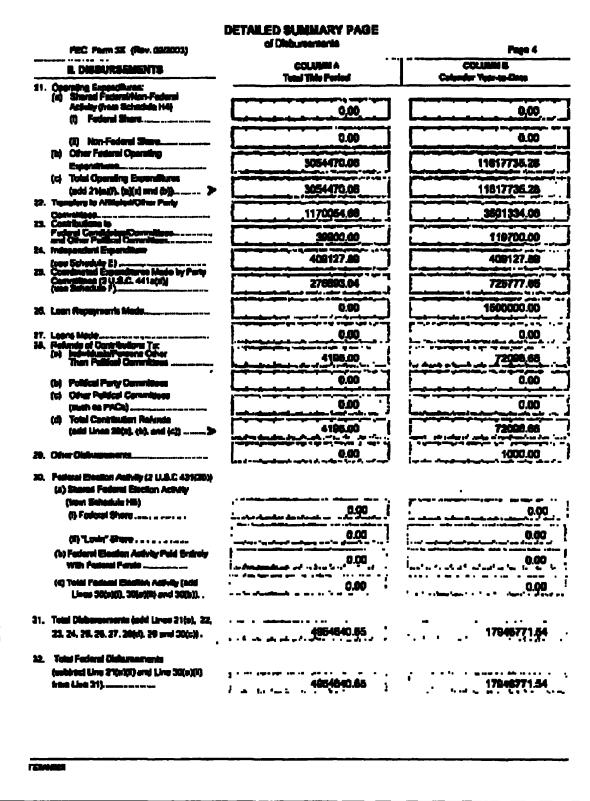
FEC Form SX (Rev. 02/2003)

Democratic Sensional Campaign Commi

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SUMMARY PAGE OF RECEPTS AND DISBURSEMENTS

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#### DETAILED SUMMARY PAGE

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SCHEDULE F (FEC Form 3%)		•				
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SCHEDULE F (FEC Form 3X)					
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ITEMZED COORDINATED EXPENDITURES MADE BY

POLITICAL PARTY COMMITTEES OR DESIGNATED AGENT(S) ON BEHALF OF CANDIDATES FOR FEDERAL OFFICE

(To be used only by Political Committees to the General Blacker)

PAGE 1000/1912

FOR LINE 25 OF FORM 30

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SCHEDULE F (FEC Form 3X	ו				
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SCHEDULE F (FEC Form 3X)			
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SCHEDULE F (FEC Form 3X) ITEMIZED COORDINATED EXPE	NDITURES MADE BY		
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# United States Senate

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**Presented by the Federal Election Commission** 

TRY A: NEW SEARCH **RETURN TO: FEC HOME PAGE** 

**Committee ID:** C00188367

### DEMOCRATIC PARTY OF OREGON

232 NE 9th Ave.

Suite 105

Portland, OR 97232

Treasurer Name:

Michael Radway

Committee Designation: (N/A)

**Committee Type:** 

Y (QUALIFIED PARTY(SEE 2USC SECT.441(A)(4)))

#### NOTE:

Candidate listings may appear here as a result of draft committees or independent expenditure committees

registering with the FEC. If no official documents of an authorized committee appear below, the individual identified here has taken no action to become a candidate.

Click the Display Image column to quickly view a report page by page. Click the Display PDF column to receive and view/print entire reports in PDF format.

Year 2008						
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Image or PDF
FEBRUARY MONTHLY		02/20/2008	01/01/2008	01/31/2008	61	28930610234 PDF
MARCH MONTHLY		03/20/2008	02/01/2008	02/29/2008	87	28930837244 PDF
MARCH MONTHLY	AMEND	05/15/2008	02/01/2008	02/29/2008	88	28931539866 PDF
REQUEST FOR ADDITIONAL INFORMATION		04/16/2008	02/01/2008	02/29/2008	3	28039693604 PDF
REQUEST FOR ADDITIONAL INFORMATION		06/25/2008	02/01/2008	02/29/2008	3	28039753642 PDF
APRIL MONTHLY		04/18/2008	03/01/2008	03/31/2008	85	28990879005 PDF
APRIL MONTHLY	AMEND	05/16/2008	03/01/2008	03/31/2008	86	28931575815 PDF

**Presented by the Federal Election Commission** 

TRY A: NEW SEARCH **RETURN TO: FEC HOME PAGE** 

Committee ID: C00437277

## **JEFF MERKLEY FOR OREGON**

PO BOX 29136

PORTLAND, OR 97296

Tressurer Name:

IVO MARTIN TRUMMER

Committee Designation: P (PRINCIPAL CAMPAIGN COMMITTEE OF A CANDIDATE)

Committee Type:

S (SENATE)

Candidate State:

OR (Oregon)

CANDIDATE:

MERKLEY, JEFFREY ALAN

ID: S8OR00207

Kevin Fledorier Mc: 14

### NOTE:

Candidate listings may appear here as a result of draft committees or independent expenditure

registering with the FEC. If no official documents of an authorized committee appear below, the individual identified here has taken no action to become a candidate.

Click the Display Image column to quickly view a report page by page. Click the Display PDF column to receive and view/print entire reports in PDF format.

Year 2008						
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STATEMENT OF ORGANIZATION	AMEND	04/12/2008			7	28020170486 PDF
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48 HOUR CONTRIBUTION NOTICE		05/05/2008			7	28020231339 PDF
48 HOUR CONTRIBUTION NOTICE		05/06/2008			6	28020231643 PDF
48 HOUR CONTRIBUTION NOTICE		05/07/2008			6	28020231803 PDF

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## Presented by the Federal Election Commission - 2007-2008 Cycle

### TRY A: <u>NEW SEARCH</u> RETURN TO: <u>FEC HOME PAGE</u>

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<b>Oregon</b>	<u>sen</u>	Democratic Party	Challenger
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Individual Contri	butions:	\$1,376,585	
Non-Party (e.g. F Committees:	PACs) or Other	\$233,262	
Contributions fro	m Party Committee	es \$0	
Candidate Contri	bution:	<b>\$0</b>	
Candidate Loans:		\$250,000	
Other Loans:		\$0	
Total Disburseme	ents:	\$1,708,299	
Transfers to Auth	orized Committees	s: <b>\$</b> 0	
Individual Refund	ds:	<b>\$</b> 3,675	
Non-Party (e.g. P Refunds:	ACs) or Other	\$1,000	
Candidate Loan I	Repayments:	<b>\$</b> 0	
Other Loan Repayments:		<b>\$0</b>	

Beginning Cash: \$0
Latest Cash On Hand: \$151,657
Debts Owed By: \$250,000

Committees Included:

JEFF MERKLEY FOR OREGON

C00437277

Through: 04/30/2008

TRY A: <u>NEW SEARCH</u> RETURN TO: <u>FEC HOME PAGE</u>